IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 5TH JULY 2007 / 14TH ASHADHA 1929

WP(C).No. 4602 of 2006(W)

PETITIONERS:
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1. **CHELLAMMAL, AGED 65 YEARS,**
   W/O.MUTHUSWAMY, REISIDING AT POOKKARATHOTTAM,
   ATTAPPALAM, PAMPAMPALLAM, PUDUSSERY VILLAGE,
   PALAKKAD TALUK.

2. **PONNAMMAL, AGED 63 YEARS,**
   W/O.SHANMUGHA SUNDHARAM, RESIDING AT CHINNAYYA
   **PILLA STREET, KUNIYAMUTHUR, COIMBATORE, **
   TAMILNADU.

3. **THANGAVELU, AGED 58 YEARS,**
   S/O.LATE PAZHANIYAPPA NAICKER, KOLAYAKKODE,
   PUDUSSERY VILLAGE, PALAKKAD DISTRICT.

4. **BHAGYALAKSHMI, AGED 53 YEARS,**
   W/O.DEVARAJAN, VADAKATHY KULAMBU KALAM,
   MANIYERI, VENGODI, ELAPPULLI VILLAGE,
   PALAKKAD TALUK.

5. **GUNAVELU, AGED 48 YEARS,**
   S/O.LATE PAZHANIYAPPA NAICKER,
   RESIDING AT KOLYAKKODE, PUDUSSERY VILLAGE,
   PALAKKAD TALUK.

BY ADV. SRI.T.M.RAMAN KARTHA

RESPONDENTS:
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1. **RANGASWAMY, AGED 60 YEARS,**
   S/O.LATE PAZHANIYAPPA NAICKER, RESIDING AT
   KOLAYAKKODE, PUDUSSERY VILLAGE, PALAKKAD TALUK.

2. **RAJASEKHARAN, AGED 30 YEARS,**
   S/O.RANGASWAMY, DO. DO.

3. STATE OF KERALA, REPRESENTED BY THE DISTRICT COLLECTOR, PALAKKAD.

4. THE TAHSILDAR (RR) PALAKKAD, CIVIL STATION, PALAKKAD.

5. THE VILLAGE OFFICER, PUDUSSERY VILLAGE, PALAKKAD TALUK.

6. THE MANAGER, STATE BANK OF TRAVANCORE, PUDUSSERY VILLAGE, PALAKKAD TALUK.

BY ADV. SRI.SAJJU.S

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 05/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 4602/2006

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE PLAINT IS OS NO. 405/2003 OF THE PRINCIPAL MUNSIFF COURT, PALAKKAD.

EXT.P2. COPY OF THE JUDGMENT IN EXT. P1 SUIT DT. 22/12/2005.

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PIUS C. KURIAKOSE,J.

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W.P.(C) No.4602 of 2006

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Dated: 5th July, 2007

JUDGMENT

Respondents 1 to 4 have already been served with notice. Respondents 5 and 6 remain to be served. But I notice that 5th respondent is the Village Officer and since third respondent, the State of Kerala has already been served with notice, notice to the 5th respondent is not necessary. The 6th respondent is the Manager, State Bank of Travancore. The impugned order pertains to court fee to be paid. I am of the view that to decide that issue it is not necessary to hear the 6th respondent at whose instance revenue recovery proceedings were initiated against the petitioner.

2. It has been noticed by the learned Munsiff himself that the question of court fee will have to be determined by the court on the basis of the averments in the plaint and that the contentions raised by the defendants are not to be considered at all. Ext.P1 is the plaint and it was unnecessary for the learned Munsiff to have "meticulously" analysed the averments in the plaint and the documents produced along with the plaint to determine at the stage of determining the correct court fee payable. The averments in the plaint will show that the plaintiffs do maintain that they are in joint possession of the

plaint schedule property. There is no admission in the plaint which indicate that even according to the plaintiffs they are out of possession. Under these circumstances, I am of the view that the plaintiffs were justified in valuing the relief portion under Section 37 (2) of the Court Fees Act. To that extent Ext.P2 is liable to be interfered with. Now coming to the learned Munsiff's decision regarding the court fee payable on the relief of injunction which is seen claimed as a separate independent relief, I do not find any infirmity about the view taken by the learned Munsiff. The suit was liable to be valued in accordance with proviso to Section 27(c) of the Act. That part of the impugned order is approved.

The Writ Petition will stand allowed to the above extent.

srd **PIUS C.KURIAKOSE, JUDGE**